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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,950	06/20/2003	Ronald Miles Johnson	9D-HL-20170	9485

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EXAMINER	
STINSON, FRANKIE L	

ART UNIT	PAPER NUMBER
1792	

MAIL DATE	DELIVERY MODE
10/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/600,950	JOHNSON, RONALD MILES	
	Examiner	Art Unit	
	FRANKIE L. STINSON	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15 and 17* is/are pending in the application.

4a) Of the above claim(s) *13-15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12 and 17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Japan'195 (Japan 4-325195) or Korean'082 (Korean 2001098082) in view of Richmond et al. (U. S. Pat. No. 5,873,518).

Re claims 1, 6 and 17, Japan'195 and Korean'082 are each discloses a washing machine comprising:

a tub (not shown in either Japan'195 or Korean'082, however typical);

a cold-water valve (see abstract) for controlling flow of cold water to said tub;

a hot water valve (see abstract) for controlling flow of hot water to said tub;

a sensor (see abstract) positioned to sense a full fill level in said tub and configured to generate a full fill signal when the tub is full;

a sensor (see abstract) positioned to sense an intermediate fill level, the intermediate fill level less than full and corresponding to an adjustment level (see "slightly lower water level" in Korean'082 and "lower water level "in Japan'195) in said tub, said sensor configured to generate an intermediate fill signal when the intermediate fill level is reached with the hot water valve and the cold water being operatively coupled to the sensor with at least one of the valves being actuated based on the signals of the sensor to control a wash temperature; and

a controller ("control unit" in Korean'082 and fig. 7 in Japan'195) operatively coupled to said sensor and said hot and cold water valves, said controller operable to control said valves based on the fill signals from said sensor to control a wash water temperature that differs from the claims only in the recitation of the sensor being a pressure sensor and there being an independent first and second pressure sensors. The patent to Richmond (col. 5, lines 16-31) is cited disclosing that it is old and well known to employ a pressure type level sensor for measuring the height/volume of water in a washtub as well as the sensors being independent with the same controller the temperature of the water. It therefore would have been obvious to one having ordinary skill in the art to modify the sensor of either Japan'195 or Korean'082, to be of the pressure and/or temperature type as taught by Richmond, since this is considered to be a substitution of equivalents (see MPEP 2144.06 SUBSTITUTING EQUIVALENTS KNOWN FOR THE SAME PURPOSE) and for providing a more precise control of the water temperature as recognized in Richmond. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Re claim 2-5 and 7-10, to the have valves controlled as a function of various signals is deemed to be an obvious matter of design in view of the corresponding microcontroller in Japan'195, Korean'082 and Richmond. It is understood that the microcontrollers are programmable to control various components of operating systems with many possible control scenarios available and therefore, the operation/control of

the valves in Japan'195, Korean'082 or Richmond are capable of functioning as claimed, if programmed as such. To have the controller program as specifically claimed is of little patentable weight.

APPARATUS CLAIMS MUST BE STRUCTURALLY DISTINGUISHABLE FROM THE PRIOR ART

>While features of an apparatus may be recited either structurally or functionally, claims<directed to >an< apparatus must be distinguished from the prior art in terms of structure rather than function. >In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429,1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971);< In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). " [A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

MANNER OF OPERATING THE DEVICE DOES NOT DIFFERENTIATE APPARATUS CLAIM FROM THE PRIOR ART

A claim containing a " recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987) (The preamble of claim 1 recited that the apparatus was " for mixing flowing developer material" and the body of the claim recited " means for mixing ..., said mixing means being stationary and completely submerged in the developer material" . The claim was rejected over a reference which taught all the structural limitations of the claim for the intended use of mixing flowing developer. However, the mixer was only partially submerged in the developer material. The Board held that the amount of submersion is immaterial to the structure of the mixer and thus the claim was properly rejected.).

Re claim 11, Japan'195 discloses the independent sensors. Re claim 12, to have the sensors provided with multiple trips points is considered to be an obvious extension of the teachings of Japan'195, Korean'082 or Richmond and a mere substitution of equivalents.

3. Applicant's arguments filed Aug. 29, 2007 have been fully considered but they are not persuasive. In regard to the remarks on the combination of either Japan'195 or Korean'082, with the teachings of either Richmond or Quandt, namely that the same would render the primary references inoperable, it is agreed in the case of the Quandt reference and the same is hereby removed. However, it is noted that the sensor of Richmond is disclosed as one capable of functioning as a pressure and/or temperature sensor, and thusly the teachings of Japan'195 or Korean'082 would still be preserved since the sensor, as previously mentioned, is capable of functioning as a temperature and a pressure sensor. As for the specific recitation of the functions of the controller as instantly claimed, it is the examiner's position that since all of the structure claimed is disclosed by the applied prior art, any programmable controller would be capable of functioning as instantly claimed if programmed as such. Therefore, the specifics of the controller as claimed, are of little patentable weight.

It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

The recitation that an element is "sufficient" to perform a given function is not a positive limitation but only requires he ability to so perform. It does not constitute a limitation in any patentable sense.

It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached on M-F from 5:30 am to 2:00 pm and some Saturdays from approximately 5:30 am to 11:30 am.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr, can be reached on (571) 272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

fls

FRANKIE L. STINSON
Primary Examiner
GROUP ART UNIT 1792